IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6678 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIPINCHANDRA GAMANLAL CHOKSHI

Versus

COMPETENT AUTHORITY UNDER SAFEMA

Appearance:

Mr.S.H. Sanjanwala, Senior Advocate, with
MR RS SANJANWALA for Petitioner Nos. 1-4
MS MANISHA LAVKUMAR, Advocate, for Respondent No. 1
Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER,
for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioners have prayed that, since the order of detention passed against

Mr.Bipinchandra Gamanlal Chokshi, petitioner No.1, under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("COFEPOSA", for short) is revoked by the Government on lifting of Emergency, the Act in question, being the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ("SAFEMA", for short), is not applicable to any of the petitioners and, therefore, the notices dated 23.8.2001, at Annexure 'O' Collectively, issued under Section 6 of SAFEMA are bad and illegal, and void ab initio, and the said notices may be quashed and set aside. It is also prayed that the notices issued under Section 6, at Annexure 'O' Collectively to the petition, are without jurisdiction and the same are issued in a mala fide manner. It is also prayed in the petition, that the detention order dated 11.6.1976, at Annexure 'H' to the petition, passed against Mr.Bipinchandra Gamanlal Chokshi, petitioner No.1, may be quashed and set aside and the notices issued under the SAFEMA pursuant to the aforesaid detention order also may be quashed and set aside. It is also prayed that the final order issued by the Competent Authority under Section 7 of the SAFEMA, which is at Annexure 'E' to the petition, also may be quashed and set aside.

2. This petition is having a chequered history. All the four petitioners belong to one family. The petitioners were subjected to preventive detention orders under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("COFEPOSA", for short). So far as petitioners 2 to 4 are concerned, they were detained under COFEPOSA in the year 1974. Prior to that, they were also detained under the provisions of the Maintenance of Internal Security Act, 1971 ("MISA", for short). It seems that the said order of detention was quashed and set aside by this Court in the year 1974. Subsequently, Bipinchandra Gamanlal Chokshi was also detained under the COFEPOSA. Subsequently, a declaration under Section 12-A was also issued, declaring that it was necessary to detain petitioner No.1 to deal effectively with the Emergency. Subsequently, upon the Emergency being lifted, the order of detention passed against petitioner No.1 was revoked by the Government and petitioner No.1 was released from detention. It is the say of the petitioners that so far as petitioner No.1 is concerned, in view of the Emergency prevailing at the relevant time, his case was not referred to the Advisory Board and the detention order of petitioner No.1 was revoked by the order dated 21.3.1977.

As per the averments in the petition, so far as

petitioners 2 to 4 are concerned, they were subjected to notices under SAFEMA. The aforesaid petitioners had challenged the issuance of notices, and notices qua the said petitioners were quashed and set aside by this Court.

3. It is required to be noted that, initially, the petitioners have filed a writ petition before this High Court, being Special Civil Application No.11062 of 2001, challenging the impugned notice issued to the petitioners under Section 6 of the Act. A learned single Judge of this Court, by order dated 26.4.2002, came to the conclusion that the petitioners have, straight away, rushed to this Court, instead of replying to the said show cause notices. The learned single Judge, while disposing of the said matter, observed as under :-

" ... ...

1. It appears that the present petitioners against whom show cause notice under section 6 of the SAFEMA has been issued by the authority has straightaway rushed to this Court instead of replying to the said show cause notice. The petitioners have also challenged the detention order. The respondents have filed detailed reply.

2. When this matter has come up for hearing, learned Counsel for the respective parties more particularly learned Senior Central Government Standing Counsel has drawn my attention towards the above aspect of the matter.

3. In view of the above, learned Counsel for the petitioners, Mr.R.S. Sanjanwalla, seeks permission to withdraw the petition with a liberty to approach the authority who has issued show cause notice under section 6 of the SAFEMA within one month from the date of this order and with a request that petitioners may be permitted to raise all contentions there before the said authority including the preliminary point which they have raised in this petition. He has also requested that if these contentions are not considered by the authority, then they may be permitted to raise the same again before this Court. He has also sought liberty to challenge the order of detention on the same grounds or such other grounds as are available. He has prayed for stay of the operation of the order

also.

4. Permission is granted as prayed for. Liberty to approach the authority within one month from the date of this order. However, request for stay cannot be accepted as the order that may be passed by the authority against the petitioner will be an appealable order and there is a provision under section 12(4) of SAFEMA to file appeal within 45 days before the Appellate Tribunal. Under the circumstances, even if the order that may be passed by the authority against the petitioner is not stayed, petitioner is not prejudiced as he is protected under the Act for a period of 45 days and, therefore, protecting the petitioners now at this stage does not arise. The request is, therefore, rejected. This petition stands disposed of as withdrawn with permission and liberty as aforesaid reserved with no order as to costs. Rule is discharged.

... ..."

It is very clear that the learned Advocate for the petitioners requested the Court to allow him to withdraw the petition in order to go before the authority, who has issued show cause notice under Section 6 of the SAFEMA. In order to submit to the jurisdiction of the Authority, therefore, the petition was withdrawn from this Court. The petition was accordingly rejected as withdrawn and liberty was given to the petitioners to challenge the final order.

After the order of this Court, the competent authority decided the matter and by order dated 28th June, 2002, passed an order under Section 7 of the Act, by which the properties, as mentioned in the operative part of the order, are ordered to be forfeited to the Central Government free from all encumbrances. The properties mentioned in the said order read as under :-

" ... ...

1/4th share each of AP-2, AP-3 and AP-4 in land at Survey No.175, Bhestan Village, Taluka City Surat, admeasuring 4-9-83 Hectares (approx.20000 Sq. Yards) and 1/4th share each of AP-2, AP-3 and AP-4 in land situated at Survey No.10 and 11/1309 at Nanavati Main Road, Surat along with building and structure standing thereon.

... ..."

By way of this petition, the petitioners have challenged the aforeaid order passed by the Competent Authority under Section 7 of SAFEMA, and, as pointed out earlier, even the detention order of Bipinchandra Gamanlal Chokshi, petitioner No.1, is also challenged in this petition.

4. During the pendency of this petition, the petitioners have also challenged the aforesaid order of the Competent Authority under Section 7 by way of preferring an appeal before the Appellate Tribunal. The Appellate Tribunal has already admitted the said appeal and it is not in dispute that the same is pending for final disposal. During the course of the arguments, it is pointed out by Ms.Manisha Lavkumar, learned Advocate for the Government of India, that due to the pendency of this petition before this Court, perhaps, the Tribunal has not proceeded further with the aforesaid appeal.

5. By filing this petition, the petitioners have challenged the aforesaid order of the competent authority on various grounds. The petitioners have also challenged the detention order of petitioner No.1, by which he was detained at the relevant time under COFEPOSA.

6. Mr. Sanjanwala, learned Senior Counsel, has attacked the impugned order on various grounds.

It is submitted by Mr.Sanjanwala that, initially, petitioners 2, 3 and 4 were also subjected to individual notices under SAFEMA and that those notices were quashed and set aside by the High Court. It is submitted that, therefore, it is not open for the Department to issue fresh notices to the aforesaid respondents and it would amount to abuse of process of law on behalf of the Authority to give repeated notices to the aforesaid petitioners. It is submitted by Mr.Sanjanwala that it is not open to the authority to change the nexus, and again, to issue fresh notices to all the petitioners on the ground that petitioner No.1, being a smuggler, his relatives, viz., petitioners 2 to 4, are holding property on behalf of petitioner No.1. It is also argued by Mr.Sanjanwala that so far as Bipinchandra Gamanlal Chokshi, petitioner No.1, is concerned, at the time when he was detained under COFEPOSA, in view of the Emergency prevailing, he was not served with the grounds of detention and on lifting the Emergency, ultimately, the order was revoked by the Government. It is submitted by

Mr.Sanjanwala that the detention order of petitioner No.1 is illegal and, therefore, the said detention order is required to be quashed and set aside, and, consequently, notices to petitioners 2 to 4 are also required to be quashed and set aside. It is also submitted by Mr.Sanjanwala that successive notices issued to petitioners 2 to 4 are bad in law and even the detention orders of two of the petitioners having been set aside by this Court, there is no question of issuing notices under SAFEMA. It is also submitted that there is no nexus regarding the so-called smuggling activity of petitioner No.1 with the other petitioners. It is also submitted that even on the ground of delay in issuance of notices under Section 6, the notices are required to be set aside. It is submitted that, even in the notices, no nexus regarding the activities of Bipinchandra Gamanlal Chokshi with the other petitioners has been shown. It is submitted by Mr.Sanjanwala that, earlier, when these petitioners came to this Court, since the learned single Judge was of the opinion that the petitioners can submit all these points before the Authority, the petitioners have withdrawn the petition and, therefore, it is open for the petitioners now to challenge the said order by way of this petition. It is submitted by Mr.Sanjanwala that this Court has taken decision in various cases, that a petition, even at the stage of issuance of show cause notices under Section 6, is maintainable. He submitted that this Court has, even set aside such notices on the ground that the said notices are without any basis. He, therefore, submitted that, in view of the facts and circumstances of the case, it is a fit case in which this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, by setting aside the show cause notices as well as the final order of the Competent Authority, at Annexure 'E' to the petition, dated 28th June, 2002. Mr.Sanjanwala also further submitted that since the petitioners were required to file appeal within the stipulated time, i.e. 45 days, and since there is no provision for condonation of delay, the petitioners have also preferred statutory appeal before the Appellate Tribunal, challenging the order of the competent authority, which is also impugned in this petition.

Mr.Sanjanwala also further submitted that since in this petition, even the order of detention of Bipinchandra Gamanlal Chokshi, i.e. petitioner No.1, is also impugned, the availability of alternative remedy should not come in the way of the petitioners because the Appellate Tribunal cannot examine the validity of the detention order passed against Bipinchandra Gamanlal

Chokshi, petitioner No.1, and, according to him, this is the only forum, before which the detention order of petitioner No.1 can be examined. He submitted that, therefore, this Court may exercise its powers under Article 226 of the Constitution of India, for setting aside the detention order passed against petitioner No.1. It is also prayed that the impugned order at Annexure 'E' also may be quashed and set aside, and even the notices issued under Section 6 are also required to be set aside.

7. It is submitted by Mr.Sanjanwala that since the Appellate Tribunal has no power to examine the merits of the detention order, the petitioners cannot be compelled to go to the Appellate Tribunal, and as the said remedy is not adequate so far as the detention order of the petitioner No.1 is concerned, the question of challenge to the detention order of petitioner No.1 is required to be examined by this Court. It is required to be noted that, in case the detention order of petitioner No.1 is quashed and set aside, naturally, all subsequent proceedings under SAFEMA would automatically fall to ground.

8. In this connection, it is required to be noted that, petitioner No.1 had, initially, approached this Court by filing a writ petition, being Special Civil Application No.3716 of 1995, challenging the detention order. The said matter came up for hearing before N.N. Mathur, J., and the learned single judge disposed of the group of petitions, which included the petition of petitioner No.1 also, and, ultimately, by the judgment and order dated 27.2.1997, the group of petitions was dismissed by the learned single Judge.

The learned single Judge of this Court came to the conclusion that since the petitioner No.1 has not challenged the said detention order earlier, he cannot challenge the same on the ground that, subsequently, the authority has issued notices under SAFEMA. The learned single Judge also negatived the contention on behalf of petitioner No.1 that since the detention order is passed by applying SAFEMA, it is open for the petitioner or his relatives and friends to challenge the order of detention. The said judgment of the learned single Judge in Karimaben K. Bagad v. State of Gujarat, is reported in 1997(2) GLR 1595. The learned single Judge also came to the conclusion that revocation of detention order under Section 11(i) of COFEPOSA being not covered by the proviso to Section 2(2)(b) of SAFEMA, action under SAFEMA cannot be said to be barred.

One of the petitioners of the group of petitions had challenged the order of the learned single Judge before the Honourable Supreme Court and the Supreme Court allowed the appeal by setting aside the order of the learned single Judge and the matter of the aforesaid petitioner was sent back by the Supreme Court to the High Court. The said judgment of the Supreme Court in Karimaben K. Bagad v. State of Gujarat is reported in AIR 1998 SC 2938. In the said judgment, the Supreme Court came to the conclusion that the petitioner will be entitled to question the validity of the detention order while assailing proceedings initiated against the petitioner under SAFEMA. The Supreme Court held that the detention order can be challenged at the stage when the authorities have initiated proceedings under SAFEMA. Basing his argument on the aforesaid judgment of the Honourable Supreme Court, Mr.Sanjanwala, learned Senior Counsel, has vehemently submitted that since the view taken by the learned single Judge is upset by the Supreme Court in the aforesaid decision, the validity of the detention order can be examined by this Court while deciding the present Special Civil Application.

Mr.Sanjanwala also submitted that petitioner No.1, who was detained under COFEPOSA during the Emergency, can, still challenge the detention order on the ground that no grounds were formulated or no grounds existed at the relevant time when petitioner No.1 was detained and that such grounds were never supplied to the petitioner on cessation of Emergency. It is submitted by Mr.Sanjanwala that petitioner No.1 can challenge the detention order on the limited grounds available to him.

9. The principal question which requires consideration is whether this Court can examine the validity of the detention order in this Special Civil Application, especially when another learned single Judge of this Court had rejected the prayer of petitioner No.1, challenging the detention order passed against him under COFEPOSA. It is, no doubt, true that the group of petitions was heard by the learned single Judge (Coram : N.N. Mathur, J.) and the learned single Judge has dismissed all these petitions on the ground that the petitions challenging the detention order were not maintainable at the stage of issuance of notice under SAFEMA and that view is now reversed by the Supreme Court by setting aside the very judgment of the learned single Judge, but it is required to be noted that so far as the judgment of the Supreme Court is concerned, the said judgment was given in case of petitioner of one of the Special Civil Applications and the Special Civil

Application of the aforesaid petitioner was sent back by the Supreme Court to this Court.

So far as the present Petitioner No.1 is concerned, it is an admitted fact that the said order of the learned single Judge is challenged by him by filing an appeal, being Letters Patent Appeal No.478 of 1997. The said Letters Patent Appeal has been admitted and it has been pointed out to this Court that in the Civil Application for interim relief, interim relief is also granted.

Mr.Sanjanwala, however, submitted that so far as present petitioner No.1 is concerned, the detention order of petitioner No.1 is challenged on different grounds, which were not raised before the learned single Judge (Coram : N.N. Mathur, J.) in the earlier petition. It is submitted by him that the relevant grounds were not formulated at the time of detaining the petitioner nor did such grounds find place in the file. Of course, the said fact is denied by the learned AGP. However, in my view, the challenge to the detention order in the present petition so far as the detention order of petitioner No.1 is concerned, is not maintainable in view of the fact that even on additional grounds available, it is not open for this Court, as a coordinate court, to take a different view by entertaining this petition on the ground that on additional points, the detention order passed against petitioner No.1 is required to be quashed. It is, no doubt, true that the Supreme Court has sent the matter back of one of the petitioners, whose matter was also decided by the learned single Judge, but so far as the aforesaid judgment of the Supreme Court is concerned, the said judgment is applicable to the said petitioner only, because, so far as the present petitioners are concerned, the detention order of petitioner No.1 has become final subject to the decision in the Letters Patent Appeal. As a coordinate court, it is not open for this Court to take a different view in connection with the detention order passed against petitioner No.1. The argument which is canvased by Mr.Sanjanwala before this Court can be canvassed and examined only by the Letters Patent Bench in the pending Letters Patent Appeal. Even on additional grounds, the second successive petition, challenging the detention order before a single Judge, is not maintainable, as the same would be barred by res judicata, because between the parties, the judgment given by the Court is binding unless the same is upset by the appellate court. I am, therefore, not in a position to agree with the contention of Mr.Sanjanwala that the present Special Civil Application in connection with the

validity of the detention order passed against petitioner No.1 is maintainable as the petitioners are challenging the said order on different grounds, which, according to Mr.Sanjanwala, are available for challenging the detention order. If such powers are to be exercised, it may even amount to reviewing the order passed by the learned single Judge, by which the detention order of petitioner No. 1 is upheld. This Court cannot sit in appeal over the aforesaid decision of the learned single Judge. Not only that, this Court cannot examine the validity of the detention order on other grounds. Apart from the aforesaid fact, as pointed out earlier, so far as the decision of the learned single Judge in connection with the detention order of petitioner No.1 is concerned, the same has become final so far as single Judge is concerned and it is not open for this Court, therefore, even to examine the merits of the detention order, may be on different grounds, especially when so far as the Supreme Court judgment in the case of Karimaben K. Bagad v. State of Gujarat and others, AIR 1998 SC 2938 is concerned, it will apply only qua the petitioner before the Supreme Court, whose petition was sent back by the Supreme Court to the High Court. All these points, therefore, which are canvassed before this Court, are required to be canvassed by Mr.Sanjanwala before the Letters Patent Bench, before whom the Letters Patent Appeal is pending.

The contention of Mr.Sanjanwala, that, the detention order of petitioner No.1 is required to be set aside, is negatived on the aforesaid ground, as, it is not open for this Court to examine the said question in this petition.

10. Mr.Sanjanwala submitted that, at least, the said detention order of petitioner No.1 can be challenged by petitioners 2 to 4, as, by virtue of the aforesaid detention order, the authority under SAFEMA has initiated proceedings against them for forfeiting their properties. However, as stated earlier, when the detention order of petitioner No.1 is already the subject matter of Letters Patent Appeal and when the detention order of petitioner No.1 holds the field as on today, on the same grounds, challenge to the said order, at the instance of petitioners 2 to 4, cannot be entertained. Even if the view of the learned single Judge on question of law is upset by the Supreme Court, that point is available to the petitioners in the pending Letters Patent Appeal for attacking the detention order in question, but this petition for challenging the detention order on some additional grounds, in my view, is not maintainable and

one single Judge cannot upset the judgment already given by another single Judge, which is binding between the parties till it is reversed or upset by the appellate court. The first contention of Mr.Sanjanwala, therefore, is negatived.

11. It was next argued by Mr.Sanjanwala that the notice under Section 6 of the SAFEMA is without authority of law and without jurisdiction. He has also submitted that in the notices under Section 6, appropriate particulars are not given, that such notices are vague and that there is a delay of considerable period in issuance of such show cause notices. It is submitted by Mr.Sanjanwala that the petitioners are not expected to remember everything after so many years, especially when such notices are absolutely vague. It is also submitted that the authority has not given necessary particulars or even documents to the petitioners and the case of the petitioners has not been examined by the authority by considering the relevant material on record. It is submitted by him that the petitioners have, mainly, argued their appeal only on preliminary ground. It is requested that, therefore, the order in question may be set aside and the matter may be sent back to the competent authority for hearing the petitioners. As pointed out earlier, Mr.Sanjanwala has also attacked the said order on the ground that, initially, petitioners 2 to 4 were subjected to individual notices and, subsequently, the authority has changed the nexus, and, again, fresh notices have been given, even though earlier notices, which were issued to petitioners 2 to 4, in their individual capacities, have been set aside by the High Court. The said final order is also challenged on various other grounds, such as delay in issuing show cause notices, etc.

12. On the aforesaid point about change of nexus, Mr.Sanjanwala has relied upon the decision of this Court (Coram : D.P. Buch, J.) rendered in Special Civil Application No.373 of 1999 on 2nd April, 2004 (in the matter of Amrutlal Chandmal Jain v. Competent Authority and Administration, Mumbai Unit), to substantiate his say that this Court can interfere at show cause notice stage under Section 6 of SAFEMA, especially when, on the face of it, in view of the law declared by this Court, the authority had no jurisdiction to change the nexus by giving successive notices on different grounds.

It is, however, required to be noted that, during the pendency of this petition, subsequently, the petitioners have already approached the Appellate

Tribunal and the appellate Tribunal is seized of the matter, as their appeals have been registered and are pending for final disposal. Mr.Sanjanwala, however, relied upon some judgments delivered by the Supreme Court on the point that alternative remedy is no bar. He has placed strong reliance on the decision of the Honourable Supreme Court in Union of India v. Haji Mastan Mirza, AIR 1984 SC 681. Mr.Sanjanwala has vehemently submitted that when this Court can interfere at a show cause notice stage, there is a stronger ground in his favour by which it can interfere against the final order. It is, therefore, vehemently submitted by Mr.Sanjanwala that availability of alternative remedy should not come in the way of the petitioners and since the petition is admitted, the petitioners may not be relegated to the alternative remedy. It is also submitted by Mr.Sanjanwala, that, on the face of it, the action of the competent authority is not sustainable, especially when this Court, in the earlier proceedings, set aside the notices issued to petitioners 2 to 4, in their individual capacities. The authority under the Act has abused the process of law, and, by way of colourable exercise of powers, has given them fresh notices by changing the nexus. He submitted that it is not open for the authority to play hot and cold in such a manner and since the law declared by this Court (Coram : D.P. Buch, J.) in Amrutlal Chandmal Jain (supra) is binding to the authority, by which it has been clearly stated by the learned single Judge that, it is not open for the authority to change the nexus and based on that, the learned single Judge has set aside the notices, on the same principle, this Court should set aside the orders so far as petitioners 2 to 4 are concerned.

13. The aforesaid argument of Mr.Sanjanwala, though, prima facie, looks attractive, in my view, on closer scrutiny, it is found that this is not a case, in which this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. It is not in dispute that during the pendency of this petition, the petitioners have, on their own, approached the appellate Tribunal and the appeal is admitted and is pending for final hearing.

14. In this connection, Ms.Manisha Lavkumar, learned Advocate for the Union of India, has strongly relied upon the decision of the Apex Court in K.S. Rashid & Son v. I.T.I. Commission and others, wherein the Apex Court observed as under :-

" ... ...

For purposes of this case it is enough to state that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. So far as the present case is concerned, it has been brought to our notice that the appellants before us have already availed themselves of the remedy provided for in section 8(5) of the Investigation Commission Act and that a reference has been made to the High Court of Allahabad in terms of that provision which is awaiting decision. In these circumstances, we think that it would not be proper to allow the appellants to invoke the discretionary jurisdiction under Article 226 of the Constitution at the present stage, and on this ground alone, we would refuse to interfere with the orders made by the High Court.

... ..."

Ms.Manisha Lavkumar has also placed reliance upon the decision of the Apex Court in Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat, 1969(2) SCC 74. In the said decision, the Honourable Supreme Court held as under :-

" ... ...

It may be useful to refer to certain other decisions which by analogy can be of some assistance in deciding the point before us. In U. J. S. Chopra v. State of Bombay the principle of merger was considered with reference to s. 439 of the Criminal Procedure Code which confers revisional jurisdiction on the High Court. In the majority judgment it was held, inter alia, that a judgment pronounced by the High Court in the exercise of its appellate or revisional jurisdiction after issue of a notice and a full hearing, in the presence of both the parties would replace the judgment of the lower court thus constituting the judgment of the High Court-the only final judgment to be executed in accordance with law by the court below. In Chandi Prasad Chokhani v. The State of Bihar, it was said that save in exceptional and special circumstances this Court would not exercise its

power under Art. 136 in such a way as to bypass the High Court and ignore the latter's decision which had become final and binding by entertaining an appeal directly from orders of a Tribunal. Such exercise of power would be particularly inadvisable in a case where the result might lead to a conflict of decisions of two courts of competent jurisdiction. In our opinion the course which was followed by the High Court, in the present case, is certainly one which leads to a conflict of decisions of the same court.

Even on the assumption that the order of the appellate court had not merged in the order of the single Judge who had disposed of the revision petition we are of the view that a writ petition ought not to have been entertained by the High Court when the respondent bad already chosen the remedy under s. 115 of the Code of Civil Procedure. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the court to prevent abuse of process as also to respect and accord finality to its own decisions.

... ..."

It is required to be noted that, in the instant case, the petitioners have already availed of the alternative remedy on their own and the Appellate Tribunal is seized of the matter. It is not in dispute that the Appellate Tribunal is seized of the matter and perhaps, the appeal is not decided in view of the pendency of this petition. It is also required to be noted that, in view of the interim order granted in the Letters Patent Appeal, which is preferred by petitioner No.1, even it is not open for the authority to proceed further for the purpose of forfeiting the property of the petitioners on the basis of the order passed by the Competent Authority as long as the Letters Patent Appeal is pending. It is, no doubt, true that, in a given case, even if alternative remedy is available, this Court, under Article 226 of the Constitution of India, can, still, entertain the petition, without asking the

petitioners to exhaust the alternative remedy and, in a given case, this Court can still exercise the power by entertaining the petition, even though, statutory remedy may be available. However, these are self-imposed restrictions and so far as the facts of the present case are concerned, it is not in dispute that the petitioners themselves have chosen to exhaust the alternative remedy by approaching the Appellate Tribunal and the said appeal is pending for final adjudication. In my view, this Court should not encourage these parallel proceedings undertaken by petitioner No.1, one before this Court and another before the Appellate Tribunal. Once the Appellate Tribunal is seized of the matter, in my view, it would not be proper to exercise powers under Article 226 of the Constitution of India. As stated earlier, availability of alternative remedy and resorting to alternative remedy, both stand on a different footing. In the instant case, it is not in dispute that the petitioners have already availed of the alternative remedy. Under the circumstances, when the Appellate Tribunal under the Act is seized of the matter, all these points, which are canvassed before this court, can, very well, be canvassed before the Appellate Tribunal. Under these circumstances, I would not like to exercise my extraordinary jurisdiction, especially when alternative remedy is availed of by the petitioners by approaching the Appellate Tribunal and the Appellate Tribunal being seized of the matter, it would not be proper for this Court to exercise the powers under Article 226 of the Constitution of India. The points which are canvassed during the course of the arguments can, naturally, be canvassed before the Appellate Tribunal and, in fact, if the decision by the Appellate Tribunal is against the petitioners, naturally, the remedy of approaching this Court is always available to the petitioners under Article 226 of the Constitution of India. Under these circumstances, without examining the merits of the contentions raised by Mr.Sanjanwala, as indicated in the order, this petition, in my view, is required to be rejected on the ground of alternative remedy being availed of by the present petitioners and especially when the Appellate tribunal is seized of the matter. The Appellate Tribunal has got wider jurisdiction to appreciate the facts of the case and it can decide even the question of facts as well as of law.

15. Under these circumstances, this petition is rejected on the grounds, as indicated in this order. It is clarified that this Court has not examined the contentions, which are raised by Mr.Sanjanwala, and which contentions have been incorporated in the present order,

on merits. It is for the Appellate Tribunal to decide all these points, if the same are canvassed at the time of hearing of the appeal. However, so far as the challenge to the detention order of petitioner No.1 is concerned, the same is negatived.

16. At this stage, it is also required to be noted that, so far as petitioners 2 to 4 are concerned, they are subjected to order under Section 7 of SAFEMA in view of the detention order passed against petitioner No.1. As long as Letters Patent Appeal of petitioner No.1 is pending, wherein he has challenged the detention order, naturally, the Authority cannot proceed against petitioners 2 to 4 for forfeiting the properties in view of the order passed under SAFEMA, as, the foundation of passing the said orders against petitioners 2 to 4 is the detention order passed against petitioner No.1.

At this stage, Mr.Sanjanwala, learned Senior Advocate for the petitioners, submitted that since, in the present Special Civil Application, there is an interim relief, the petitioners had not pressed for interim relief before the Appellate Tribunal. In this behalf, he has also relied upon the interim order of the Appellate Tribunal for the purpose of substantiating the said say. Considering the fact that the interim relief is in operation since long from the time of admitting this petition, and considering the fact that the Appellate Tribunal is seized of the matter, the interim relief is extended till the Appellate Tribunal disposes of the appeal of the present petitioners. It is hoped that, since the proceedings are very old, the Appellate Tribunal may dispose of the said appeal expeditiously, preferably by 31st December, 2004.

17. Subject to what is stated above, the petition is disposed of. Rule is discharged. No order as to costs.

18th August, 2004 (P.B. Majmudar, J.)

***

(apj)